

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE
COMMISSION,

No. 1:14-CV-11858-NMG

Plaintiff,

v.

TELEXFREE, INC.
TELEXFREE, INC.,
TELEXFREE LLC,
JAMES M. MERRILL,
CARLOS N. WANZELER,
STEVEN M. LABRIOLA,
JOSEPH H. CRAFT,
SANDERLEY RODRIGUES DE
VASCONCELOS,
SANTIAGO DE LA ROSA,
RANDY N. CROSBY and
FAITH R. SLOAN,

Defendants

and

TELEXFREE FINANCIAL, INC.,
TELEX MOBILE HOLDINGS, INC.,

Relief Defendants.

**APRIL 15, 2015 STATUS REPORT OF THE
DEPARTMENT OF JUSTICE
CONCERNING PARALLEL CRIMINAL PROCEEDING**

By order of October 8, 2014, the Court granted the Department of Justice's motion to intervene in these proceedings, and further granted its motion to stay discovery until parallel criminal proceedings are resolved. *See Order (Dkt # 275)* at 10 ("Discovery in this civil enforcement action brought by the SEC will be STAYED pending resolution of the parallel criminal proceedings against defendants Merrill and Wanzeler in Case No. 14-cr-40028-

Case 1:14-cv-11858-NMG Document 295 Filed 04/15/15 Page 2 of 4
TSH.”). The Court also ordered the Department of Justice (“DOJ”) to file a status report on the progress of the criminal case on or before January 15, 2015, and every three months thereafter.

Id. On January 15, 2015, the Government filed a status report (*Dkt* # 289).

The criminal case is proceeding smoothly with the government providing discovery on a rolling basis, but discovery is not complete. There is an extremely large volume of discoverable material in this case.¹ The volume and scope of discovery combined with the fact that the case involves documents and witnesses outside the United States caused this case to be designated a complex case by the Magistrate pursuant to 18 U.S.C. Section 3161(h)(7)(B)(ii). (*U.S. v. Wanzeler et al.*, 14-cr-40028, *Dkt* # 118).

Since the last status report, the government has produced a large volume of discovery materials to the defense. In addition to providing materials to the defense, the government has obtained additional materials from foreign governments, TelexFree’s court appointed Chapter 11 trustee, and via the execution of additional search warrants. Despite the volume of discovery produced to date, there are still materials which need to be provided.

Discovery thus far provided to the defendant includes: a database of materials seized from TelexFree’s headquarters in April 2014 (24 GB), a database of materials produced to the government by the Trustee overseeing TelexFree’s affairs (75 GB), the contents of a personal email account belonging to defendant James Merrill, approximately 45 GB of additional information received as a result of a search warrant executed at an internet service provider – consisting largely of TelexFree-related YouTube videos and back-up and subscriber data.

¹ The case involves a substantial amount of discovery even for a large white collar case. For example, the government seized 46 computer servers from TelexFree, along with about 35 boxes of hardcopy materials. Beyond this, the government accumulated, and has produced, about 100,000 pages of information subpoenaed from banks, payment processors, accounting firms, and other entities. The government has also received substantial amounts of discoverable material from the SEC, the court appointed Chapter 11 trustee administering TelexFree’s affairs, email service search warrants, a search warrant to YouTube for hundreds of video clips and supporting business records, and a search warrant to a cloud based information storage company. Additionally, in the course of their own investigation, authorities in Brazil have, so far, executed nine search warrants relevant to this case and have collected substantial amounts of additional evidence, including bank records and correspondence.

Judge Hennessy continues to keep close tabs on the parties' progress, scheduling status conferences approximately every six weeks. The government anticipates additional status conferences before discovery is complete. At this stage, assuming the case goes to trial, it would be difficult to predict a trial date.

Per the Court's order of October 8, 2015, DOJ will submit another status report three months hence, on July 15, 2015.

Respectfully submitted,

CARMEN M. ORTIZ
United States Attorney

By: /s/ Cory S. Flashner
Cory S. Flashner – Bar # 629205
Assistant U.S. Attorney
595 Main Street
Worcester, MA 01608
508-368-0103
cory.flashner@usdoj.gov

Date: April 15, 2015

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants, on April 15, 2015.

By: /s/ Cory S. Flashner
Cory S. Flashner – Bar # 629205
Assistant U.S. Attorney
595 Main Street
Worcester, MA 01608
508-368-0103
cory.flashner@usdoj.gov

Date: April 15, 2015